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Human rights situations that require the Council's attention

Written statement* submitted by Lawyers' Rights Watch Canada, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The situation of lawyers and human rights defenders in Turkey since July 2016[1]

The situation of judges, lawyers, journalists and human rights defenders (collectively referred to as HRDs) in the Republic of Turkey (Turkey) previously of concern,[1]1 has deteriorated dramatically since the 15 July 2016 attempted coup.[2] Since then, thousands of HRDs have been subjected to widespread, systematic human rights violations for peacefully exercising internationally protected rights to freedoms of expression, association, assembly, and participation in public affairs, and for engaging in lawful professional activities as judges, lawyers, journalists and advocates.

United Nations (UN) human rights treaties ratified by Turkey include the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT).[3] Turkey has legal obligations to guarantee rights and freedoms for all individuals within its territories and subject to its jurisdiction, including:

- Equality before the law (ICCPR Articles 7, 2, 10);
- Freedom from arbitrary detention (ICCPR Articles 3, 9);
- Expression (ICCPR Article 19);
- Association and assembly (ICCPR Article 20);
- Legal representation (ICCPR Article 14 (3));
- Notice of charges (ICCPR Article 14.3 (b);
- Freedom from ex post facto charges (Article 15);
- Fair and public determination of criminal charges and rights by a competent, independent and impartial tribunal (ICCPR Article 14.1);
- Freedom from torture and ill-treatment (ICCPR Article 7 and UNCAT);
- Remedies for violations (ICCPR Article 2.3.

The ICCPR allows States Parties to derogate some rights when "strictly required by the exigencies of the situation" and with certain reporting requirements.[4] The Constitution of the Republic of Turkey (Constitution) guarantees equality before the law, freedom of expression (Article 26), and the rule of law (Article 2). It confirms that "[e]veryone possesses inherent fundamental rights and freedoms which are inviolable and inalienable." The Constitution allows a declaration of a state of emergency for six months, renewable for four months at a time.[5]

The Human Rights Committee (HR Committee) confirms that,

> [S]tates parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence."[6]

The HR Committee emphasizes the peremptory and non-derogable nature of the prohibitions on arbitrary detention, unacknowledged detention and discrimination.[7] The HR Committee emphasises fair trials and safeguards such as the right to habeas corpus:

> ... [T]he principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.[8]

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1 The footnotes may be found in the version of this report posted at https://www.lrwc.org/?p=12861.

Other rights that must not be derogated include:

- Freedom from torture and ill-treatment (ICCPR Article 4(2), UNCAT);
- Freedom from unnecessary or disproportionate deprivation of liberty (General Comment (GC) 35[9]);
- Right to a remedy for violations (ICCPR Article 4(2), GC 29[10])
- Right not to be compelled to confess guilt, and prohibition of statements or evidence obtained in violation of ICCPR Article 7 (GC 32,[11] UNCAT Article 15).

To discharge these obligations States must ensure the right to legal representation in criminal and civil proceedings.[12] The Basic Principles on the Role of Lawyers (Basic Principles)[13] identify State duties to ensure legal representation and protect lawyers from interference, harassment and reprisals. Compliance with the Basic Principles is fundamental to ensuring equal and effective protection of rights and access to remedies for violations.

Within days of the attempted coup, Turkey submitted notice of derogation of the ICCPR and issued a Decree restricting rights to counsel and solicitor/client privilege and authorising detention without access to a judge for up to thirty days.[14]

On 16 July 2016, the Higher Council of Judges and Prosecutors issued a list of 2,745 lower courts judges and prosecutors, plus 48 members of the Council of State, Turkey's highest administrative court, two members of the Constitutional Court, 140 members of the Court of Cassation, and four members of the Higher Council of Judges and Prosecutors – all suspended on suspicion of membership in "terrorist" organizations including the Fetullah Terrorist Organization and Democratic Union Party. Another 543 judges and prosecutors were dismissed by 1 September 2016. Individual assessments were not carried out in all cases. Only 198 judges and prosecutors were reinstated by October 2016.[15]

On 19 July 2016, the Ankara prosecutor's office announced a decision to detain 2,740 judges and prosecutors. By 27 July, 1,684 judges and prosecutors had been jailed.[16] By 26 October, 202 lawyers had been placed in pre-trial detention on suspicion of involvement in the coup attempt or links to the Gülenist movement.

Lawyers feared reprisals for representing detained persons.[17] Lawyers report clients held without charge and incommunicado and denied timely access to counsel, adequate notice of charges and time to prepare a defence. Numerous allegations of torture and ill-treatment have been reported.

In December 2016, the Special Rapporteur on Torture noted conditions conducive to torture, including:

- Extension of the period of custody without judicial review to 30 days;
- Extension of the period without access to a lawyer to five days;
- Denial of confidential exchange between those suspected of terrorist crimes and their lawyers; and,
- Introduction of immunity from criminal prosecution for counter-terrorist forces conducting operations in southeast Turkey.[18]

Widespread and systematic violations of fundamental rights have continued. In January 2018, the Constitutional Court ordered the release of two journalists after a year in pre-trial detention, on the basis that the arrests were not warranted. Turkey publically criticized the decision and a lower penal court subsequently overturned the release orders. Defense counsel characterized the events as indicative of a crisis of constitutional order.[19] More than 110,000 public officials reportedly have had their employment terminated since July 2016. Arrests continue, with at least 50,000 remanded to pre-trial detention since July 2016 and many subjected to prosecutions on overbroad charges based on questionable accusations. Numerous cases of torture and ill-treatment of detainees in police custody were reported through 2017, including beatings, prolonged enforced stress positions, threats of rape, threats to lawyers, and interference with medical examinations. There have been reports of at least 12 enforced disappearances.[20]

Dozens of journalists face terrorism-related charges. Authorities frequently impose arbitrary bans on public assemblies and violently disperse peaceful demonstrations.

Many HRDs face detention and trial on overbroad charges that preclude foreknowledge, notice and an effective defence, such as:

- spreading propaganda for an armed terrorist organisation (Law on Fight against Terrorism, Article 7(2));
- denigrating the Turkish nation, the Republic of Turkey, institutions and organs of the State (Turkish Criminal Code (CC), Article 301);
- insulting the President (CC, Article 299);
- membership in an armed terrorist organization (Penal Code of Turkey (PC) Article 314(2));
- membership in an armed organization with the purpose of committing the offences listed parts four and five of this chapter (PC, Article314 (2));

The honorary chair of Amnesty International Turkey was jailed on politically-motivated charges. [21] In July 2017, ten HRDs were detained during a routine meeting in Istanbul and accused of aiding unnamed terrorist organizations; eight were remanded to pre-trial detention before a court ordered their release on bail. In September 2017, 16 lawyers representing a teacher and an academic were detained and 14 subsequently remanded to prison. In November 2017, their lawyer, head of the Contemporary Lawyers Association, was arrested.[22]

Documentation of rights violations is severely hampered by the closure of more than 150 media outlets. Turkey has the highest number of imprisoned journalists in the world; 73 journalists were reportedly in jail as of December 2017.[23]

Conclusions

States of emergency may not lawfully be used indiscriminately or indefinitely. Turkey has not provided clear evidence of the necessity of suspending internationally protected rights of thousands—judges, prosecutors, lawyers, journalists and others—subjected to arbitrary arrest and detention, illegitimate charges, denial of due process, unfair trials, and torture and ill-treatment.

LRWC requests the Human Rights Council to urge Turkey to:

- Repeal the state of emergency declaration and Decree;
- Release all HRDs arbitrarily detained;
- Restore the professional independence of judges, prosecutors, lawyers and journalists;
- Authorize an official visit by the Special Rapporteur on the Independence of Judges and Lawyers to investigate the professional independence and security of judges and lawyers in Turkey and make pertinent recommendations.